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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 426

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

CHARLES P. LEININGER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

THE CONSTITUTIONAL QUESTION

The respondent asserts (Br. 24–26) that if Section 218 (a) be given the construction contended for by the Government, it is subject to the same infirmity as the taxing act held unconstitutional in *Hoeper* v. *Tax Commission of Wisconsin,* 284 U. S. —, decided November 30, 1931. This contention begs the question by assuming that the income which the Commissioner taxed to the respondent in the present case was the property of his wife. Whether it was her property or the respondent's

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property is one of the issues, the Government's position being that the income was property of the respondent before it was property of his wife because she was neither a partner in the Eagle Laundry Company nor an owner of its income-producing *corpus*. In the *Hoeper case* the wife "received taxable income, composed of a salary, interest and dividends, and a share of the profits of a partnership with which her husband had no connection."

RECENT CASES

The decision of the Board of Tax Appeals in *Luce* v. *Commissioner,* 18 B. T. A. 923, cited in the Government's brief on the merits at page 18, was affirmed by the Court of Appeals of the District of Columbia on January 18, 1932. The opinion is reported in Prentice-Hall Federal Tax Service (1932), at page 562. The taxpayer was a member of a law partnership. He executed an instrument by which he constituted himself trustee for his wife of one-half of the profits, salary, or other compensation or income accruing to him as a member of the firm. The wife returned these sums as her income and the husband showed them only on a fiduciary return which he filed as trustee. The Commissioner taxed these sums to the husband. The decision of the Board upholding the Commissioner was affirmed by the Court of Appeals on the authority of *Lucas* v. *Earl,* 281 U. S. 111.

Two other recent cases fall with those distinguished on page 21 of our main brief, *Ferguson, Collector,* v. *Nelson,* decided by the Circuit Court of Appeals for the Third Circuit on February 2, 1932, and reported in the United States Daily of February 5, 1932, at page 2756, and *Seatree* v. *Commissioner,* decided by the Board of Tax Appeals on January 27, 1932, syllabus in Prentice-Hall Tax Service (1932), at page 659. The former case dealt with an assignment of a contract right to royalties for the use of a patent. In the latter case, the taxpayer was a member of a partnership of accountants. The partnership agreement provided that he could retire from the firm on any June 30 by giving notice, and that in case of retirement or death, he or his representatives would receive the amount of capital he had contributed, his share of the profits to the date of retirement or death, and four shares of the profits of the partnership for the three years following the retirement or death. These payments were to be made without the rendition of any further services. He retired from the partnership on June 30, 1921. On August 3, 1922, he assigned to a trust company in trust for his daughters his right to the four undivided shares of the profits due or thereafter to become due under the partnership agreement. The trust was irrevocable. The partnership consented to the assignment, and made the payments of the four shares of the profits

to the trust company in 1922, 1923, and 1924. The Commissioner taxed these sums to Seatree. The Board of Tax Appeals upheld the ruling as to the 1922 payment on the ground that the right to that payment had accrued before the transfer in trust, but reversed the ruling of the Commissioner as to the years 1923 and 1924 on the ground that Seatree had divested himself of all ownership with respect to the payments for those years. The Board said that it was conceded that Seatree was one of the partners largely responsible for the growth and good will of the firm and that the payments for three years were compensation for his interest in the good will, which was in the nature of a capital asset; and it held that the assignment was of a property right, and not merely of income to accrue in the future.

CASES ON THE PARTNERSHIP QUESTION

On pages 8 and 12 of the respondent's brief cases are cited which are said to support the respondent's contention that by the agreement with his wife she became either a partner in the Eagle Laundry Company or the equitable owner of half of the respondent's interest in the Company. Since we believe that the partial quotations from these cases appearing on pages 8, 12, and 13 of the respondent's brief give an inaccurate picture of the applicable law, we have abstracted, and quoted fully from, the cases cited by the respondent.

Rosenstiel v. *Gray*, 112 Ill. 282, was a bill by Gray, Sunderland, and Robey for the settlement of partnership accounts against Rosenstiel. Originally, Gray, Sunderland, and Rosenstiel were members of a copartnership which manufactured and sold woolen goods under the name of C. H. Rosenstiel & Co. In March, 1873, Gray and Sunderland sold an undivided one-third of their interest in the business to Robey. The business continued until June, 1873, when Rosenstiel sold all his interest in the firm to others. "The bill prayed an accounting of all the co-partnership business from the time of its commencement up to the time of the termination of the same by the sale by Rosenstiel * * *." As to Rosenstiel's sale, the court said (p. 288):

> What Rosenstiel sold to Thompson and Blanchard was his one-third interest in the partnership property. This interest was something, only, which would be remaining after the payment of this firm's liability for * * * advances and other partnership debts, the rule being, that *the purchaser of an interest of one of the co-partners in partnership property acquires only such interest as the vendor had, and that is, his share of the residue after the affairs of the partnership are wound up and the debts paid* * * *. (Italics ours.)

The court also said (pp. 291–292):

> It is urged that there was error in finding and decreeing payment to Robey, because

Rosenstiel never consented that the latter should become a member of the firm. It appears that Robey acquired an interest in the firm in March, 1873, by purchase from Sunderland and Gray, and that *the firm name was then changed* to Gray, Robey & Co. All this, it is said, was done without the knowledge or consent of Rosenstiel. Although there be no direct evidence of any actual knowledge of or consent to the admission of Robey to the firm on the part of Rosenstiel, yet, from the length of time which elapsed from Robey's purchase into the firm, and change of the firm name, until the sale of Rosenstiel's interest in June, 1873, with no objection appearing on the part of Rosenstiel, there would be ground of inference of an implied acquiescence by Rosenstiel in Robey's becoming a member of the firm. But supposing Robey was not a partner with the consent of Rosenstiel, he was a joint owner with Gray, Sunderland and Rosenstiel at the time Rosenstiel went out of the firm, and as such was a necessary party to any suit for a distribution of the assets, and might, we think, not improperly, have a decree for any sum that might be found due him on account of the firm property, and even against Rosenstiel. It caused no increase of the amount found due from Rosenstiel, and *we do not perceive that it made with him any essential difference, or afforded any substantial cause of complaint, that he was decreed to pay a portion of such amount to Robey, who was entitled thereto,*

instead of the whole amount to the two other partners. (Italics ours.)

The *Rosenstiel case* differs from the present case in three important respects. 1. It was the intent of the parties involved in the transfer to Robey that he should become a partner. In the present case it does not appear that respondent and his wife intended by their agreement to make her a partner in the Laundry Company, nor does it appear from the statement of the agreement in the findings of fact that the agreement purported to constitute her such a partner. 2. The firm name was changed to include that of Robey. There was no change in the firm name in the present case. 3. The effect of holding that Robey became either a partner or a joint owner of the firm assets was merely to uphold the decree in favor of Robey as against Rosenstiel. In any case, Robey would have been entitled to the same share as against Gray and Sunderland. As the court was careful to point out, it made no difference to Rosenstiel whether he paid Robey directly, or indirectly through the other partners. In the present case decision of the question affects substantial rights of the parties.

In *Smith-Powers Logging Co.* v. *Bernitt,* 237 Fed. 570 (C. C. A. 9th), Bernitt and others entered into an agreement with a firm known as Dean & Co., which owned tide lands, to construct and operate log booms upon the lands. The parties to the agreement were to share in the proceeds and con-

tribute to the maintenance of the booms in stated proportions. The property of Dean & Co. eventually came into the hands of the Smith-Powers Logging Co., and the interest of Bernitt and the others into the hands of the plaintiffs in this suit, who sought to recover their interest in the booms and their share of the proceeds of its operation. The trial "court found from the record that all the successors in interest to Dean & Co. recognized the agreement and treated with Bernitt and his associates and successors strictly according to the terms thereof, and that the appellants can not now controvert the appellees' interest in the booms." In affirming a decree for the plaintiffs, the Circuit Court of Appeals said (p. 572):

> The appellants contend that the testimony fails to show any partnership between the copartnership of E. B. Dean & Co. and the predecessors in interest of the appellees. The evidence, however, shows clearly that the original agreement was that of a *joint venture*. The final situation was complicated by the changes that subsequently occurred, such as the retirement of Young and Klahn. But through all the changes the business continued to be operated as before, without any objection upon the part of Dean & Co. or any one. From the conduct of the parties, the court below was clearly justified in holding that there was consent to the changes in membership by the concurrence of all the parties, evidenced by their conduct.

> It is well settled that, with such concurrence, the purchaser of an interest may become a partner with the consent of all the parties, either expressed or implied from their conduct. [Citations.] *But it is not important to inquire how long the partnership continued to exist.* The important fact is that the predecessors in interest of the appellees were induced by E. B. Dean & Co. to enter upon lands which the latter owned and to contribute one-half the expense of constructing booms thereon, with the understanding that all parties were to have a joint interest in them, and that the booms were operated under that understanding until the appellees were ousted. (Italics ours.)

Thus in this case also the result would have been the same whether or not there was a partnership, and it is not clear that the court's decision rested on a finding of continued partnership. Moreover, the Circuit Court of Appeals had before it a finding by the lower court on the evidence that all the parties had consented to the changes in "membership." In the present case there is no such finding.

In *Nirdlinger* v. *Bernheimer,* 133 N. Y. 45, the plaintiffs were the representatives of Frederick Nirdlinger, who had been a subpartner with his brother Jacob in a joint venture. The suit was for an accounting against the representatives of Jacob and against Bernheimer, one of the joint adventurers. Frederick had had a half interest in the funds which Jacob contributed to the joint venture, and

the brothers had agreed that Frederick was entitled jointly with Jacob in the latter's share of the property acquired by the joint adventurers, and should share equally in the burdens imposed on Jacob by the joint venture. The agreement was not made known to the other joint adventurers. The trial court entered an interlocutory judgment in favor of the plaintiffs, which the intermediate appellate court reversed upon the appeal of Bernheimer, the representatives of Jacob having acquiesced in the judgment. In the Court of Appeals, Bernheimer argued that Frederick had forfeited his interest by his failure to bear his share of the burdens of the joint venture imposed upon Jacob. In reversing the order of the intermediate appellate court and affirming the judgment of the trial court, the Court of Appeals of New York said (pp. 53, 54, 55):

> We are unable to see how the defendant Bernheimer can avail himself, upon this appeal, of any such question. Jacob Nirdlinger's representatives have acquiesced in the judgment, and as Frederick was only a subpartner of Jacob's, not known to the other members of the firm, and having no other or greater rights in the firm property than those which he acquired by assignment from his brother, it is not seen how any of the partners, other than Jacob, or his representatives, can take advantage of any failure on Frederick's part to comply with the conditions upon which he acquired an interest in his brother's share of the co-

partnership estate. He owed no duty to the common enterprise. His obligation was to his brother. If the later is not in default in defraying his share of the burden of the joint-adventure, the failure of the former to reimburse him is available to him alone as a defense. The defendant Bernheimer is not prejudiced; he can only be required to account for Jacob's share of the property, and *it is immaterial to him whether the whole share is paid to Jacob or divided between him and Frederick's representatives.*

The right of a sub-partner to maintain an equitable action of this character upon the facts disclosed in this case can not be successfully questioned. As between themselves the brothers were partners, and the subject of the partnership is the interest which one of them had in the Minnesota enterprise, and the extent of which must be determined in order to adjust the equities between them. By the death of the brother's intestate their respective rights have, by operation of law, become vested in their heirs and legal representatives, and if for no other reason the settlement and distribution of their estates would render an accounting necessary. The property in which both estates have a joint interest is in the hands of Bernheimer as trustee, and his presence as a party defendant is authorized both under sections 447 and 452 of the Code; the former of which provides that a person may be made a defendant who is a necessary party for a com-

plete determination or settlement of a question involved therein; and the latter imposes upon the court the duty of directing persons to be brought in whose presence is required for a final disposition of the controversy. [Citations.]

The case of *Burnett* v. *Snyder* (81 N. Y. 550) is relied upon by the respondent; but is not applicable. The subpartner there made no contribution to the capital of the principal firm, and had no proprietory interest in its funds, or in the profits arising in its business before their division, and the question involved related solely to his liability to the creditors of the firm. Here the plaintiffs have a vested interest in the corpus of the enterprise, and the relation of subpartners has been terminated by the death of the parties to it, and the time has arrived when equity requires that the status of all the parties having a right to share in the partnership investments shall be ascertained.

* * * * *

The admission of plaintiffs' right to maintain this action as the successors and representatives of a subpartner of one of the members of the defendant's firm, is not antagonistic to the principle of personal selection, or *delectus personarum*, as it is sometimes called, which is usually the controlling motive in the formation and pursuit of partnership adventures. *The defendants are not compelled to admit the plaintiffs as members of their firm. It is still Jacob*

> *Nirdlinger's interest in the enterprise which is to be the subject of adjudication,* and the plaintiffs are concluded by his dealings with the firm, and by his acts and attitude with reference to its affairs. Payments made to him are chargeable to them; his defaults, if any, are imputable to them, and if the defendant Bernheimer has annually rendered accounts to him, which, as between them, have become accounts stated, they will be given a like effect upon the accounting which has been ordered in this action, and can not be avoided, except upon some ground which would ordinarily be sufficient to open such an account, as for fraud, collusion, mistake or the like.
>
> In short, the defendants are to be placed in no other or worse position than if this action had been brought and prosecuted by Jacob Nirdlinger, for the purpose of an accounting and a discovery of his interest in the common property. (Italics ours.)

The questions in *Nixon* v. *Nash,* 12 Ohio St. 647, were whether a judgment creditor of a partner could, after execution returned unsatisfied, levy upon the partner's interest in the firm, and if so, the effect of such levy. The plaintiff had made such a levy and the suit was for an accounting of the interest of the judgment debtor in the assets of the firm. A demurrer was sustained by the trial court and the intermediate appellate court affirmed. In reversing and remanding for further proceedings, with directions to overrule the demurrer, the

Supreme Court of Ohio said that the interest of a partner could be subjected to the payment of a judgment against him, but that the authorities differed widely as to the course to be pursued by the creditor and the officer executing the writ. It continued (pp. 649–650):

> * * * the decided weight of authority seems to be, that the officer may, and, for his own security and that of the execution creditor, should take possession of all the chattels levied on, and after the sale of the debtor's interest therein, redeliver the same to the other partners *and* the purchaser, who are said to be tenants in common of the chattels so sold.
>
> The levy and sale must be of an undivided interest in the chattel, corresponding to the debtor's share or nominal interest in the firm; but it is also well settled, that the separate creditor or the purchaser at such sale acquires only the beneficial interest of the debtor partner in the articles sold. *Each partner holds his interest in the joint property, subject to a trust for the partnership creditors, and the claims of his several copartners; so that the beneficial interest of each, is his residuary share after the partnership accounts are settled, and their rights, inter sese, adjusted.*
>
> *The seizure and sale is, pro tanto, at least, a dissolution of the partnership, and calls for an adjustment of the joint business.* If the partnership is then entirely solvent, the beneficial interest of the debtor in the arti-

> cles sold, may equal his proportionate share in the joint business; but if not so, a part, if not the whole, of his interest therein, may be required to liquidate the balance due from him on the final adjustment. (Italics ours.)

The court concluded that convenience demands that the levying creditor be permitted to ascertain the extent of his debtor's interest in the partnership assets by a suit for an accounting against the other partners.

Parish v. *Bainum*, 306 Ill. 618, was a suit by Parish for an accounting of the affairs of a partnership, which it was alleged was created by a contract signed by the parties. Excerpts from the opinion follow (pp. 622, 624):

> It is insisted that there was no partnership. The contract clearly provided for a trading venture in land, in which Parish was to furnish the purchase price, Noah C. Bainum was to purchase the property in his own name, manage and dispose of it, the other two parties with him were to guarantee Parish against loss, so far as two-thirds of the purchase price was concerned, by giving their note for two-thirds of the purchase price advanced by him, and all the parties to the agreement were to share in the profits in the proportions fixed by the contract. The parties engaged in such an enterprise, though no general partnership exists, are partners in the particular transaction. [Citations.]
>
> * * * * *

> when Parish failed to advance the $15,000 and it became necessary for the other partners to raise the rest of the purchase price, Noah C. Bainum went to Hall, the president of the First National Bank of Carmi, to procure the money, and arranged with him to advance $1,000 personally and take one-twentieth interest in the partnership. This was a personal arrangement between Noah C. Bainum and Hall. There is no evidence that the other partners consented to it or accepted Hall as a partner. *The purchaser from one partner of his interest in the partnership without the consent of his partners that the purchaser shall become a partner does not become a partner by reason of his purchase but merely the owner of the proportion which his vendor held in the partnership after the closing up of the partnership and the payment of the partnership debts.* (Italics ours.)

Sherk v. *First National Bank,* 152 S. W. 832, was an action by Sherk, a member of the partnership of Sherk & Stenek, against the holders of partnership property by deed of trust from Stenek. The trial court directed a verdict for the defendants. The Texas Court of Civil Appeals, after detailing the facts, said (p. 834):

> The appellant, by various assignments, complains of the action of the court in instructing a verdict for appellees, on the ground that when the deed of trust was executed by Stenek to appellees the partnership

of Sherk & Stenek was insolvent; that said firm owed appellant large sums of money, and he was entitled to a partner's lien on said lots before outside debts were paid; and that, if appellees were entitled to recover anything, it was no more than the interest of James Stenek in the property after all the firm debts of Sherk & Stenek were paid, and, as the debts were in excess of the property, the appellant [*sic*] took nothing by its deed of trust.

* * * * *

It may be said generally *the right of the partner is in effect a right to share in the surplus left after discharging all the firm debts,* including the reimbursement to the partner for advancements made by him in excess of his proportional share. Each partner has the right to require all the firm assets to be applied to the payment of the firm debts. But this right of a partner is property and can be sold and transferred. It is effectually sold and transferred by the sale and transfer of all the interest in the firm property whether to his partner or to a stranger. *Such a sale and transfer dissolves the partnership* and extinguishes the right the partners have in the property as partnership assets. (Italics ours.)

The judgment was affirmed on the ground that after the execution of the deed of trust by Stenek and its recordation, Sherk purchased from Stenek the latter's entire interest in the partnership, Sherk

assuming the debts of the firm and waiving his lien on the property of the partnership which Stenek had conveyed to the defendants.

Stokes v. *Stevens,* 40 Cal. 391, was an action of replevin to recover grain in the possession of the defendants under writs of attachment. The grain had been owned by Neuart and Young as partners, but Neuart had sold it to the plaintiffs in satisfaction of his personal indebtedness to them. The grain was in a warehouse, and the defendants sued out the writs of attachment on the grain to recover an indebtedness to them by the partnership of Neuart & Young. The trial court gave judgment for the plaintiffs. The defendants contended that Neuart had no power to convey the partnership property in payment of his individual debts as against the creditors of the firm. The Supreme Court of California said (pp. 394–395):

> The legal title to partnership property is in the copartners, either of whom has authority to convey it in any transaction within the scope of the partnership. It is equally plain that each copartner has an unlimited power of disposition of his share of the partnership property, subject only to the claims of creditors of the firm, and of the other copartners on a settlement of the partnership affairs. If the firm owes no debts, and if there be nothing due from one of the copartners to the others, he clearly has the right, at his option, to sell and convey his interest in the partnership property, un-

less he be restrained from so doing by the terms of the copartnership. But the claims of the creditors of the firm, and of the other copartners, are only in the nature of an equitable lien on the partnership property, for the security, in the one case, of the demands of the creditors, and in the other, of the remaining copartners, for any balance found to be due to them on a settlement of the partnership affairs. This lien can only be asserted in a Court of equity, which has the adequate machinery for winding up the partnership, marshaling the assets and ascertaining the debts due from the firm, and the balances, if any, due to the several copartners. * * * So long as the legal title of the partnership property remains in the copartners, a creditor of the firm may pursue his remedy against it, in an action at law, in the same manner as against an individual debtor. But if the legal title has been conveyed to a third person *bona fide*, the creditor can pursue the property only by a bill in equity to marshal the assets and enforce his equitable lien. The defendants in this case did not pursue this remedy, but, treating the sale to the plaintiffs as absolutely void, have seized the property under an attachment at law. It may be said, however, that, even though it be conceded that Neuart had the power to convey to the plaintiffs the legal title to his own interest in the grain in payment of his own individual debt, he had no power to convey the legal title to Young's interest for such a purpose; and,

consequently, that Young's interest remained unaffected by the sale to the plaintiffs, and was, therefore, subject to the attachment.

But if it be admitted that the legal title to Neuart's interest only passed to the plaintiffs, the result of the transaction was to constitute the plaintiff's tenants in common with Young of the legal title, subject to the claim of the creditors of the firm, which, as we have seen, could only be asserted, as against the plaintiffs, in a Court of equity; and the plaintiffs, being in possession, had the right to retain it as against their co-tenant, Young, or any one claiming under him. If Young's interest was subject to seizure under attachment, the levy should have been upon that interest only, and not upon the whole of the grain, thereby ignoring the plaintiffs' title to any part of it. But it may be, that Young consented to the sale by Neuart to the plaintiffs, and if so, they acquired thereby the legal title to the whole. It is clear, that if Young consented to, or authorized the sale of the grain, by Neuart to the plaintiffs, they acquired the legal title of the whole; and we must presume, in support of the judgment, that the Court found it as a fact, that Young did so consent to and authorize the sale. For these reasons, I think the defendants have mistaken their remedy, and that the judgment ought to be affirmed.

Van Brocklen v. *Smeallie*, 140 N. Y. 70, was an action for damages for breach of a contract to pur-

chase the interest of the plaintiff in a copartnership. The sole question in the case was the measure of damages applicable to such a breach. The trial court gave judgment for nominal damages, and the intermediate appellate court affirmed. In reversing the judgment, the Court of Appeals of New York said (p. 74):

> The rule of damages applied was that which pertains to sales of real property, and which differs in scope and in principle from that applicable to sales of personalty. The opinion describes the contract as one for "the purchase of land," and all the authorities cited relate to sales of real estate. They have no application to the case in hand. The plaintiff had no land to sell and did not contract to sell any. What he did bargain about was his ultimate interest in the partnership assets when converted into money and after payment of all debts. His share of the net surplus then remaining was the only subject of sale, and all that he contracted to sell. His vendee would not and could not become a partner by force of the purchase, would gain no title to the assets as such and could only force a sale of such assets, including the mill, and the distribution of the proceeds. It was said in *Tarbell* v. *West* (86 N. Y. 287), that "it is now well settled that *a purchaser from one partner of his interest in the partnership, acquires no title to any share of the partnership effects, but only his share of the surplus, after an*

accounting, and the adjustment of the partnership affairs." The courts below, therefore, proceeded on a wrong basis, which led them into error. (Italics ours.)

Keith & Son v. *Ham,* 89 Ala. 590, was an action by J. N. Ham and P. J. Ham against Keith & Son to recover damages for the conversion of cotton on which the plaintiffs claimed to hold a mortgage. The complaint alleged that one Martin gave a mortgage on the cotton to the firm of Ham & Collins (composed of J. N. Ham and Collins) and that Collins transferred his interest in the mortgage to P. J. Ham. On appeal from a judgment for the plaintiffs, the Supreme Court of Alabama said, in affirming the judgment (p. 593):

> It is immaterial what effect the assignment by Collins of his interest in the property belonging to the firm of Collins & Ham had upon the partnership, or whether the assignee and Ham constituted a new partnership. The assignment, at least, operated to vest Collins' interest in the assignee, and to make him, jointly with the other partner, the owner of the assets which had belonged to the partnership, among which was the mortgage covering the cotton alleged to have been converted. And *this suit was instituted, and properly so, by these joint owners, or owners in common, as such, and not upon any theory of a new and continuing partnership.* It was shown that the mortgage, and a note for the amount secured by it, were executed to Collins & Ham. The transfer by Collins

> to P. J. Ham was sufficiently specific to invest the latter with the former's interest. It further appeared that both the note and mortgage came to the possesion of P. J. and J. N. Ham. The objections taken in the court below, on the ground of a want of interest in P. J. Ham, were, therefore, properly overruled. (Italics ours.)

We submit that none of these cases support respondent's contention that by the agreement with his wife she became either a partner in the Eagle Laundry Company or a joint owner of its income-producing *corpus*. Many of the cases were suits for accounting of defunct partnerships. The problem before the courts in such cases is substantially different from that raised by the present case. To give the subpartner a direct right of action against the other partner is merely to eliminate one procedural step in the interest of convenience. In such elimination there is no violation of the fundamental principle of partnership law that the consent of the partners is required to make an outsider a member of the partnership.

We submit that the extracts quoted from the text books on pages 11–12 of respondent's brief do not give the views of the authors completely, and that a reading of all of the sections from which extracts are quoted will disclose that they are not at variance with our contentions.

We also wish to call the Court's attention to a misquotation of the Government's argument by

the respondent. On page 27 of the respondent's brief, the respondent quotes the Government's brief as follows:

> We submit that no agreement or assignment in respect of the income *of* the partnership can relieve a partner from a tax on all of his share of the partnership income * * *

Our argument, as stated on page 5 of our brief, is:

> We submit that no agreement or assignment in respect of the income *or* the partnership can relieve a partner from a tax on any of his share of the partnership income * * *

Respectfully submitted.

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